

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA,

v.

LESTER RAY MORGAN, #33486-177.

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Criminal Action No. **3:05-CR-079-L (01)**

ORDER

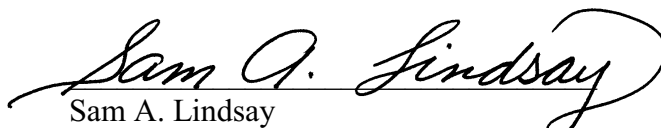
This case was referred to Magistrate Judge Renee Harris Toliver, who entered Findings, Conclusions and Recommendation of the United States Magistrate Judge (“Report”) on July 10, 2012, recommending that: (1) Defendant Lester Ray Morgan (“Defendant”) should be granted a six-day extension of time to appeal under Fed. R. App. P. 4(b)(4) because he has shown excusable neglect for the delay in filing a notice of appeal; and (2) his motion to proceed *in forma pauperis* should be denied because his appeal presents no legal points of arguable merit. Defendant filed objections to the Report on July 26, 2012, contending that the magistrate judge’s findings that his appeal is frivolous goes beyond what the United States Court of Appeals for the Fifth Circuit directed this court to determine regarding excusable neglect.

Having reviewed the pleadings, file, and record in this case, and the findings and conclusions of the magistrate judge, the court determines that the findings and conclusions of the magistrate judge are correct, **accepts** them as those of the court, and **overrules** Defendant’s objection. In addition to referring the issue of whether Defendant has shown excusable neglect, this court also referred to the magistrate judge Defendant’s January 26, 2012 Motion for Leave to Proceed *In Forma Pauperis* (Doc. 53). In determining whether Defendant should be granted leave to proceed *in forma*

pauperis on appeal as requested, the magistrate judge properly considered whether the appeal is taken in good faith pursuant to 28 U.S.C. § 1915(a)(3).

The court **grants** Defendant a six-day extension of time to appeal under Fed. R. App. 4(b)(4), and his appeal filed on January 26, 2012, is **deemed timely**; the court **denies** Defendant's Motion for Leave to Proceed *In Forma Pauperis* (Doc. 53). Pursuant to 28 U.S.C. § 1915(a)(3) and Fed. R. App. P. 24(a)(3), the court certifies that the appeal is not taken in good faith. In support of the finding that the appeal is not taken in good faith, the court adopts and incorporates by reference its January 5, 2012 order, denying Defendant's Motion for Sentence Reduction Pursuant to 18 U.S.C. § 3582(c)(2). Although the court has certified that the appeal is not taken in good faith, Defendant may challenge this finding by filing a separate motion to proceed *in forma pauperis* on appeal with the Clerk of Court, United States Court of Appeals for the Fifth Circuit, within 30 days of this order. The Clerk of the Court is **directed** to return this case to the United States Court of Appeals for the Fifth Circuit.

It is so ordered this 7th day of August, 2012.


Sam A. Lindsay
United States District Judge